IN THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

FILED
OCT 8 1992
Clerk, U.S. District Court
Eastern District of California
By /s/ Deputy Clerk

JERRY ANDERSON, et al.,
Plaintiffs,

v.

COUNTY OF KERN, et al.,
Defendants.

No. CIV F-90-205 GEB/JFM P

ORDER AND PERMANENT INJUNCTION

THIS IS A CLASS ACTION SUIT BROUGHT PURSUANT TO 28 U.S.C. § 1983 by the inmates of five Kern County jails: the Central Receiving Facility in downtown Bakersfield, which includes the Inmate Reception Center; the Men's and Women's Minimum Facilities at Lerdo; the Lerdo Pretrial Facility; and the Lerdo Maximum/Medium Facility. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On March 20, 1992, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations

were to be filed within thirty (30) days. On March 30, 1992, plaintiffs filed timely objections to the findings and recommendations. On April 11, 1992, defendants filed timely objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 305, this court has conducted a *de novo* review of the case and has determined that the magistrate judge's findings and recommendations are supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDER that:

1. The Findings and Recommendations filed March 20, 1992, are adopted in full, with the exception of Section F.2:

> Defendants shall clarify and document their procedures for providing inmates housed in other Kern County jails meaningful access to the Lerdo Pretrial law library through either regular transportation to Pretrial or through a permanent rehousing at Pretrial. Defendants shall inform Kern County inmates of the Pretrial law library through the inmate orientation booklet.

This section of the Rule 68 offer was not accepted and is not included in the permanent injunction.

2. A permanent injunction containing the following terms is hereby issued:

A. The system-wide inmate population at the Kern County jails shall not exceed a total of 2,330 inmates. The rates capacity for each of the following jails will be as follows and will not be exceeded:

1. Kern County Receiving Center: 282 inmates;

2. Womens' Minimum Facility: 96 inmates;

3. Mens' Minimum Facility: 704 inmates (this figure may be adjusted so long as the total population remains within the overall cap);

4. Lerdo Pretrial Facility: 1,232, in accordance with the pilot program approved by the Board of Corrections on July 18, 1991.

B. To meet the population limits set above, the sheriff or his designee may release prisoners or transfer them to another facility where there is adequate space when the total population of the jails or the population of any housing unit within the jails has reached ninety percent of the population limit, and the sheriff or his designee shall release prisoners or transfer them to another facility where there is adequate space when the total population of the jails or any unit thereof reaches one hundred percent of the population limit.

C. Defendants shall not operate the Lerdo Maximum/Medium Facility without a full complement of four correctional staff present at each observation post in the medium custody dormitory sections of the facility.

D. Defendants shall provide a Kern County employee, preferably a member of the medical staff serving the jail, to translate for Spanish-speaking inmates during medical and mental health interviews if the inmate so requests.

E. Defendants shall develop and file with the court a written policy proposal allowing classification and custody staff at the Kern County jails to exercise discretion to determine which among those prisoners classified as high protective custody inmates, and housed in administrative segregation based on that classification may safely exercise together and/or have dayroom access together. This proposal shall be filed with the court

within 90 days of the date of the permanent injunction. Upon the district court's approval, defendants shall implement the policy forthwith.

F. The following provisions of the Offer of Judgment filed with the court on February 21, 1991 shall be incorporated into the permanent injunction:

1. Defendants shall supplement their existing law library located in the Lerdo Pretrial Facility to include the following books and publications:

a. Federal Reporter Second (1960 to date);

b. Shepard's Federal Reporter Second Citator;

c. Federal Supplement (1960 to date);

d. Shepard's Federal Supplement Citator;

e. *Federal Civil Procedure Before Trial*, the Rutter Group;

f. *California Criminal Procedure*, Witkin;

g. *California Evidence*, Witkin;

h. *Handbook of Federal Habeas Corpus Manual* (2nd Edition), Sokol;

i. *Federal Rules*, West Publishing;

j. *State Rules*, West Publishing;

k. *Legal Research in a Nutshell*, Cohen;

l. *Legal Research, Writing & Analysis*, West Publishing;

m. *Criminal Procedure in a Nutshell*, Israel & LaFave;

n. Prisoner Union Pretrial Legal Materials;

o. Prisoner Union Post Conviction Materials;

p. Supreme Court Reporter, Volumes 18, 19, 25, 26 and 27 (replacements for missing volumes); and

q. Black's Law Dictionary (replacement for missing volume).

2. Effective immediately, no prisoner will be housed in the Kern County jails who does not receive a bed, bedding, and mattress. There will be no prisoners sleeping on the floor.

G. Defendants shall post copies of this judgment throughout the Kern County jails, together with the names, addresses and telephone numbers of plaintiffs' counsel.

IT IS FURTHER ORDERED that in all other respects, plaintiffs' requests for injunctive relief be denied.

DATED: October 28, 1992

/s/ Garland E. Burrell, Jr.
Garland E. Burrell, Jr.
United States District Judge

APPENDIX F

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
Chapter 21. Civil Rights

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.
(R. S. § 1979; Dec. 29, 1979, P. L. 96-170, § 1, 93 Stat. 1284.)

§ 1988. Proceedings in vindication of civil rights; attorney's fees

(a) The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such

civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) In any action or proceeding to enforce a provision of sections 1977, 1977A, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 USCS §§ 1681 et seq.], the Religious Freedom Restoration Act of 1993, title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], or section 40302 of the Violence Against Women Act of 1994[,], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(c) In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of sections 1977 or 1977A of the Revised Statutes [42 USCS §§ 1981 or 1981a], the court, in its discretion, may include expert fees as part of the attorney's fee.

(As amended Nov. 21, 1991, P. L. 102-166, Title I, §§ 103, 113(a), 105 Stat. 1074, 1079; Nov. 16, 1993, P. L. 103-141, § 4(a), 107 Stat. 1489, Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle C, § 40303, 108 Stat. 1941.)